
SUBSTITUTE HOUSE BILL 1492

State of Washington

59th Legislature

2005 Regular Session

By House Committee on Natural Resources, Ecology & Parks (originally sponsored by Representatives Williams, B. Sullivan, Eickmeyer and Orcutt; by request of Commissioner of Public Lands)

READ FIRST TIME 02/28/05.

1 AN ACT Relating to the department of natural resources' authority
2 to create a single pilot mitigation bank on state-owned aquatic lands;
3 amending RCW 43.84.092; reenacting and amending RCW 43.84.092; adding
4 a new chapter to Title 79 RCW; providing effective dates; providing an
5 expiration date; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the existing
8 state and federal regulatory framework for wetland and aquatic resource
9 mitigation is an important tool used to offset impacts to aquatic
10 lands.

11 (2) The legislature further finds that because impacts to wetlands
12 and aquatic resources often affect state-owned aquatic lands, the
13 department should work within established state and federal regulatory
14 mitigation processes to develop a single pilot mitigation bank on
15 state-owned aquatic lands.

16 (3) The intent of this chapter is to establish the proprietary
17 mechanisms for the department to develop, implement, and manage a
18 single pilot mitigation bank on state-owned aquatic lands. Additional

1 authority will be needed if the department seeks to establish more than
2 one mitigation bank.

3 NEW SECTION. **Sec. 2.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Compensatory mitigation" means the process of restoring,
6 creating, enhancing, or, in exceptional circumstances, preserving
7 wetlands, other aquatic resources, or uplands for the purposes of
8 compensating for the unavoidable adverse environmental impacts of a
9 project that remain after all appropriate and practicable avoidance and
10 minimization has been achieved.

11 (2) "Credit" means a unit of trade representing the increase in the
12 ecological value of a site due to improvements made to the habitat
13 conditions of the site, as measured by acreage, functions, or values,
14 or by some other regulatory approved assessment method.

15 (3) "Department" means the department of natural resources.

16 (4) "Mitigation" means the sequential process of avoiding impacts,
17 minimizing impacts, and compensating for the remaining unavoidable
18 impacts of a project.

19 (5) "Mitigation bank" means a site or sites where wetlands, aquatic
20 resources, or uplands are restored, created, enhanced, or in
21 exceptional circumstances, preserved expressly for the purpose of
22 providing compensatory mitigation in advance of authorized project
23 impacts to similar resources.

24 (6) "Mitigation banking agreement" means a legal agreement between
25 the department and a public or private entity under which the parties
26 to the agreement agree to jointly develop, implement, and manage a
27 single pilot mitigation bank that is located on state-owned aquatic
28 lands and is approved through state or federal regulatory mitigation
29 processes.

30 (7) "Mitigation banking partners" means public or private entities
31 with which the department has entered into a mitigation banking
32 agreement under section 3 of this act.

33 (8) "Project" means a physical construction project that develops
34 or redevelops land in a way that results in unavoidable adverse
35 environmental impacts that remain after all appropriate and practicable
36 avoidance and minimization has been achieved.

1 (9) "Site" means a mitigation bank site, or a site where
2 compensatory mitigation has or will occur.

3 NEW SECTION. **Sec. 3.** (1) The department may enter into mitigation
4 banking agreements with public or private entities to develop,
5 implement, and manage a single pilot mitigation bank that is located on
6 state-owned aquatic lands and is approved through state or federal
7 regulatory mitigation processes. A mitigation banking agreement must
8 establish the business relationship between the department and its
9 mitigation banking partner, clearly identifying the assets each entity
10 will contribute to the pilot mitigation bank project. The agreement is
11 not subject to the provisions of RCW 79.90.480 or 79.90.500.

12 (2) The department and its mitigation banking partners must develop
13 and adopt a management plan, for the pilot mitigation bank, that is
14 approved through state or federal regulatory mitigation processes and,
15 if applicable, by the city or county in which the aquatic lands are
16 located. The department must work cooperatively with other applicable
17 public agencies, affected federally recognized tribes, or private
18 entities in the development of the management plan, or in the
19 establishment of specifications for the plan. The department and its
20 mitigation banking partners are responsible for expenses incurred in
21 the development of the management plan. All management plans adopted
22 under this section must include:

23 (a) An identification of the wetlands, other aquatic resources, or
24 uplands and their associated ecological and recreational functions,
25 that will be improved and protected on the pilot mitigation bank site;

26 (b) Details for the creation, restoration, enhancement, or
27 preservation of the wetlands, other aquatic resources, or uplands on
28 the pilot mitigation bank site;

29 (c) Details of the long-term management actions that will occur on
30 the site, when the actions will occur, and where those actions will
31 occur within the site; and

32 (d) Details on the amount of funding necessary for the long-term
33 management endowment and details as to how the amount was calculated
34 under section 4 of this act.

35 (3) The service area for the pilot mitigation bank must be based on
36 the geographic and functional connectivity of the pilot mitigation bank

1 site with the impacting project sites, which must be determined and
2 approved through state or federal regulatory mitigation processes.

3 (4) Consistent with state and federal regulatory mitigation
4 processes, state-owned aquatic lands utilized as the pilot mitigation
5 bank will not be available for other uses that will change the intent
6 of the site as a mitigation site or compromise the ecological functions
7 of the site.

8 (5)(a) The department may sell mitigation bank credits generated
9 from the pilot mitigation bank and receive revenues from the sale of
10 mitigation bank credits generated from the pilot mitigation bank that
11 have been sold by its mitigation banking partners.

12 (b) The department and its mitigation banking partners must
13 determine the economic value of the mitigation bank credits for the
14 pilot mitigation bank. The economic value of the mitigation bank
15 credits will not be subject to the provisions of RCW 79.90.480 or
16 79.90.500. The department and its mitigation banking partners must
17 sell the credits for no less than market value, as determined using
18 appropriate mitigation credit market appraisal techniques. The
19 economic value of the mitigation bank credits may include the costs
20 associated with the habitat improvements made to the site and the value
21 associated with the use of state-owned aquatic lands for the mitigation
22 bank.

23 (c) All moneys received by the department from the sale of
24 mitigation bank credits generated from the pilot mitigation bank, in
25 excess of a long-term management endowment created in section 4 of this
26 act and in excess of the revenues to mitigation banking partners, must
27 be deposited according to RCW 79.90.245 and 79.64.040, and paid to
28 towns according to RCW 79.92.110.

29 NEW SECTION. **Sec. 4.** (1) The department or its mitigation banking
30 partners will create an endowment for the purpose of generating funds
31 that are to be used for the long-term monitoring, maintenance, and
32 management of the pilot mitigation bank.

33 (2) The department or its mitigation banking partners will assume
34 long-term management responsibility for the pilot mitigation bank after
35 the amount of money necessary to establish the endowment that will
36 adequately cover the costs of long-term monitoring, maintenance, and

1 management is determined by the department, documented in the
2 management plan, and approved through state or federal regulatory
3 mitigation processes.

4 (3) The amount of money necessary to establish the endowment must
5 be based on the specific conditions of the pilot mitigation bank site
6 and the long-term management plan for the site, as approved through
7 state or federal regulatory mitigation processes.

8 (4)(a) If the department assumes the long-term management
9 responsibility for the pilot mitigation bank, the revenue from the sale
10 of mitigation bank credits generated to establish the endowment must be
11 deposited into the aquatic lands compensatory mitigation endowment
12 account established in section 5 of this act.

13 (b) The department must keep separate accounting records for moneys
14 received into the aquatic lands compensatory mitigation endowment
15 account from the sale of mitigation bank credits to ensure that funding
16 for long-term management is fully secured and expended as approved
17 through state or federal regulatory mitigation processes.

18 NEW SECTION. **Sec. 5.** (1) The aquatic lands compensatory
19 mitigation endowment account is created in the custody of the state
20 treasurer. All receipts from moneys received by the department for the
21 purpose of creating a long-term management endowment under section 4 of
22 this act must be deposited into the account.

23 (2) The moneys in the account must be invested for the benefit of
24 the pilot mitigation bank site that the department has agreed to manage
25 under this chapter.

26 (3) The account must be administered by the state investment board.
27 The principal of the account is irreducible. Disbursements from the
28 account in an amount equal to the site management costs for the pilot
29 mitigation bank, adjusted annually by the inflation rate, must be
30 deposited into the aquatic lands compensatory mitigation management
31 account, created in section 6 of this act, upon authorization of the
32 commissioner of public lands and the director of the state investment
33 board, provided the principal of the compensatory mitigation endowment
34 account is not reduced. Allocations to the state investment board
35 expense account under RCW 43.33A.160 may also be made from this
36 account.

1 NEW SECTION. **Sec. 6.** (1) The aquatic lands compensatory
2 mitigation management account is created in the custody of the state
3 treasurer. The account will receive revenues from the aquatic lands
4 compensatory mitigation endowment account as described in section 5 of
5 this act.

6 (2) The moneys in the account must be used solely by the department
7 for the purpose of performing long-term monitoring, maintenance, and
8 management of the pilot mitigation bank site that is located on state-
9 owned aquatic lands. Only the commissioner of public lands or the
10 commissioner's designee may authorize expenditures from the account.
11 The account is subject to allotment procedures under chapter 43.88 RCW,
12 but an appropriation is not required for expenditures.

13 NEW SECTION. **Sec. 7.** The purchase and sale of mitigation bank
14 credits, generated by the single pilot mitigation bank authorized in
15 this chapter, are to be voluntarily agreed to by the department and
16 public or private third-party entities that are required to fulfill
17 regulatory compensatory mitigation obligations. Mitigation credits
18 made available through the pilot mitigation bank should be one of
19 several options for third parties to meet their regulatory compensatory
20 mitigation obligations. The department may not require a third party
21 to buy mitigation credits from the pilot mitigation bank as a condition
22 to use state-owned aquatic lands. If a third party agrees through the
23 regulatory mitigation process to purchase credits from the pilot
24 mitigation bank to fulfill its compensatory mitigation obligations for
25 impacts to state-owned aquatic lands, the third party must complete the
26 purchase prior to the department issuing a use authorization for the
27 impacting project.

28 NEW SECTION. **Sec. 8.** Nothing in this chapter affects the
29 authority of the department to exchange, sell, or transfer jurisdiction
30 of state-owned tidelands and shorelands or accept gifts of aquatic
31 lands under RCW 79.90.457, 79.90.580, or 79.90.475 except that state-
32 owned aquatic lands used for the pilot mitigation bank will not be
33 transferred out of state ownership and control.

34 NEW SECTION. **Sec. 9.** By December 31, 2010, the department must
35 provide a report to the appropriate committees of the senate and house

1 of representatives that provides the status of the pilot mitigation
2 bank in regards to regulatory certification, management plan
3 development, service area determination, credit determination,
4 valuation, and sale, and endowment fund creation and expenditure.

5 **Sec. 10.** RCW 43.84.092 and 2003 c 361 s 602, 2003 c 324 s 1, 2003
6 c 150 s 2, and 2003 c 48 s 2 are each reenacted and amended to read as
7 follows:

8 (1) All earnings of investments of surplus balances in the state
9 treasury shall be deposited to the treasury income account, which
10 account is hereby established in the state treasury.

11 (2) The treasury income account shall be utilized to pay or receive
12 funds associated with federal programs as required by the federal cash
13 management improvement act of 1990. The treasury income account is
14 subject in all respects to chapter 43.88 RCW, but no appropriation is
15 required for refunds or allocations of interest earnings required by
16 the cash management improvement act. Refunds of interest to the
17 federal treasury required under the cash management improvement act
18 fall under RCW 43.88.180 and shall not require appropriation. The
19 office of financial management shall determine the amounts due to or
20 from the federal government pursuant to the cash management improvement
21 act. The office of financial management may direct transfers of funds
22 between accounts as deemed necessary to implement the provisions of the
23 cash management improvement act, and this subsection. Refunds or
24 allocations shall occur prior to the distributions of earnings set
25 forth in subsection (4) of this section.

26 (3) Except for the provisions of RCW 43.84.160, the treasury income
27 account may be utilized for the payment of purchased banking services
28 on behalf of treasury funds including, but not limited to, depository,
29 safekeeping, and disbursement functions for the state treasury and
30 affected state agencies. The treasury income account is subject in all
31 respects to chapter 43.88 RCW, but no appropriation is required for
32 payments to financial institutions. Payments shall occur prior to
33 distribution of earnings set forth in subsection (4) of this section.

34 (4) Monthly, the state treasurer shall distribute the earnings
35 credited to the treasury income account. The state treasurer shall
36 credit the general fund with all the earnings credited to the treasury
37 income account except:

1 (a) The following accounts and funds shall receive their
2 proportionate share of earnings based upon each account's and fund's
3 average daily balance for the period: The aquatic lands compensatory
4 mitigation endowment account, the aquatic lands compensatory mitigation
5 management account, the capitol building construction account, the
6 Cedar River channel construction and operation account, the Central
7 Washington University capital projects account, the charitable,
8 educational, penal and reformatory institutions account, the common
9 school construction fund, the county criminal justice assistance
10 account, the county sales and use tax equalization account, the data
11 processing building construction account, the deferred compensation
12 administrative account, the deferred compensation principal account,
13 the department of retirement systems expense account, the drinking
14 water assistance account, the drinking water assistance administrative
15 account, the drinking water assistance repayment account, the Eastern
16 Washington University capital projects account, the education
17 construction fund, the election account, the emergency reserve fund,
18 The Evergreen State College capital projects account, the federal
19 forest revolving account, the health services account, the public
20 health services account, the health system capacity account, the
21 personal health services account, the state higher education
22 construction account, the higher education construction account, the
23 highway infrastructure account, the industrial insurance premium refund
24 account, the judges' retirement account, the judicial retirement
25 administrative account, the judicial retirement principal account, the
26 local leasehold excise tax account, the local real estate excise tax
27 account, the local sales and use tax account, the medical aid account,
28 the mobile home park relocation fund, the multimodal transportation
29 account, the municipal criminal justice assistance account, the
30 municipal sales and use tax equalization account, the natural resources
31 deposit account, the oyster reserve land account, the perpetual
32 surveillance and maintenance account, the public employees' retirement
33 system plan 1 account, the public employees' retirement system combined
34 plan 2 and plan 3 account, the public facilities construction loan
35 revolving account beginning July 1, 2004, the public health
36 supplemental account, the public works assistance account, the Puyallup
37 tribal settlement account, the regional transportation investment
38 district account, the resource management cost account, the site

1 closure account, the special wildlife account, the state employees'
2 insurance account, the state employees' insurance reserve account, the
3 state investment board expense account, the state investment board
4 commingled trust fund accounts, the supplemental pension account, the
5 Tacoma Narrows toll bridge account, the teachers' retirement system
6 plan 1 account, the teachers' retirement system combined plan 2 and
7 plan 3 account, the tobacco prevention and control account, the tobacco
8 settlement account, the transportation infrastructure account, the
9 tuition recovery trust fund, the University of Washington bond
10 retirement fund, the University of Washington building account, the
11 volunteer fire fighters' and reserve officers' relief and pension
12 principal fund, the volunteer fire fighters' and reserve officers'
13 administrative fund, the Washington fruit express account, the
14 Washington judicial retirement system account, the Washington law
15 enforcement officers' and fire fighters' system plan 1 retirement
16 account, the Washington law enforcement officers' and fire fighters'
17 system plan 2 retirement account, the Washington school employees'
18 retirement system combined plan 2 and 3 account, the Washington state
19 health insurance pool account, the Washington state patrol retirement
20 account, the Washington State University building account, the
21 Washington State University bond retirement fund, the water pollution
22 control revolving fund, and the Western Washington University capital
23 projects account. Earnings derived from investing balances of the
24 agricultural permanent fund, the normal school permanent fund, the
25 permanent common school fund, the scientific permanent fund, and the
26 state university permanent fund shall be allocated to their respective
27 beneficiary accounts. All earnings to be distributed under this
28 subsection (4)(a) shall first be reduced by the allocation to the state
29 treasurer's service fund pursuant to RCW 43.08.190.

30 (b) The following accounts and funds shall receive eighty percent
31 of their proportionate share of earnings based upon each account's or
32 fund's average daily balance for the period: The aeronautics account,
33 the aircraft search and rescue account, the county arterial
34 preservation account, the department of licensing services account, the
35 essential rail assistance account, the ferry bond retirement fund, the
36 grade crossing protective fund, the high capacity transportation
37 account, the highway bond retirement fund, the highway safety account,
38 the motor vehicle fund, the motorcycle safety education account, the

1 pilotage account, the public transportation systems account, the Puget
2 Sound capital construction account, the Puget Sound ferry operations
3 account, the recreational vehicle account, the rural arterial trust
4 account, the safety and education account, the special category C
5 account, the state patrol highway account, the transportation 2003
6 account (nickel account), the transportation equipment fund, the
7 transportation fund, the transportation improvement account, the
8 transportation improvement board bond retirement account, and the urban
9 arterial trust account.

10 (5) In conformance with Article II, section 37 of the state
11 Constitution, no treasury accounts or funds shall be allocated earnings
12 without the specific affirmative directive of this section.

13 **Sec. 11.** RCW 43.84.092 and 2004 c 242 s 60 are each amended to
14 read as follows:

15 (1) All earnings of investments of surplus balances in the state
16 treasury shall be deposited to the treasury income account, which
17 account is hereby established in the state treasury.

18 (2) The treasury income account shall be utilized to pay or receive
19 funds associated with federal programs as required by the federal cash
20 management improvement act of 1990. The treasury income account is
21 subject in all respects to chapter 43.88 RCW, but no appropriation is
22 required for refunds or allocations of interest earnings required by
23 the cash management improvement act. Refunds of interest to the
24 federal treasury required under the cash management improvement act
25 fall under RCW 43.88.180 and shall not require appropriation. The
26 office of financial management shall determine the amounts due to or
27 from the federal government pursuant to the cash management improvement
28 act. The office of financial management may direct transfers of funds
29 between accounts as deemed necessary to implement the provisions of the
30 cash management improvement act, and this subsection. Refunds or
31 allocations shall occur prior to the distributions of earnings set
32 forth in subsection (4) of this section.

33 (3) Except for the provisions of RCW 43.84.160, the treasury income
34 account may be utilized for the payment of purchased banking services
35 on behalf of treasury funds including, but not limited to, depository,
36 safekeeping, and disbursement functions for the state treasury and
37 affected state agencies. The treasury income account is subject in all

1 respects to chapter 43.88 RCW, but no appropriation is required for
2 payments to financial institutions. Payments shall occur prior to
3 distribution of earnings set forth in subsection (4) of this section.

4 (4) Monthly, the state treasurer shall distribute the earnings
5 credited to the treasury income account. The state treasurer shall
6 credit the general fund with all the earnings credited to the treasury
7 income account except:

8 (a) The following accounts and funds shall receive their
9 proportionate share of earnings based upon each account's and fund's
10 average daily balance for the period: The aquatic lands compensatory
11 mitigation endowment account, the aquatic lands compensatory mitigation
12 management account, the capitol building construction account, the
13 Cedar River channel construction and operation account, the Central
14 Washington University capital projects account, the charitable,
15 educational, penal and reformatory institutions account, the common
16 school construction fund, the county criminal justice assistance
17 account, the county sales and use tax equalization account, the data
18 processing building construction account, the deferred compensation
19 administrative account, the deferred compensation principal account,
20 the department of retirement systems expense account, the drinking
21 water assistance account, the drinking water assistance administrative
22 account, the drinking water assistance repayment account, the Eastern
23 Washington University capital projects account, the education
24 construction fund, the election account, the emergency reserve fund,
25 The Evergreen State College capital projects account, the federal
26 forest revolving account, the health services account, the public
27 health services account, the health system capacity account, the
28 personal health services account, the state higher education
29 construction account, the higher education construction account, the
30 highway infrastructure account, the industrial insurance premium refund
31 account, the judges' retirement account, the judicial retirement
32 administrative account, the judicial retirement principal account, the
33 local leasehold excise tax account, the local real estate excise tax
34 account, the local sales and use tax account, the medical aid account,
35 the mobile home park relocation fund, the multimodal transportation
36 account, the municipal criminal justice assistance account, the
37 municipal sales and use tax equalization account, the natural resources
38 deposit account, the oyster reserve land account, the perpetual

1 surveillance and maintenance account, the public employees' retirement
2 system plan 1 account, the public employees' retirement system combined
3 plan 2 and plan 3 account, the public facilities construction loan
4 revolving account beginning July 1, 2004, the public health
5 supplemental account, the public works assistance account, the Puyallup
6 tribal settlement account, the regional transportation investment
7 district account, the resource management cost account, the site
8 closure account, the special wildlife account, the state employees'
9 insurance account, the state employees' insurance reserve account, the
10 state investment board expense account, the state investment board
11 commingled trust fund accounts, the supplemental pension account, the
12 Tacoma Narrows toll bridge account, the teachers' retirement system
13 plan 1 account, the teachers' retirement system combined plan 2 and
14 plan 3 account, the tobacco prevention and control account, the tobacco
15 settlement account, the transportation infrastructure account, the
16 tuition recovery trust fund, the University of Washington bond
17 retirement fund, the University of Washington building account, the
18 volunteer fire fighters' and reserve officers' relief and pension
19 principal fund, the volunteer fire fighters' and reserve officers'
20 administrative fund, the Washington fruit express account, the
21 Washington judicial retirement system account, the Washington law
22 enforcement officers' and fire fighters' system plan 1 retirement
23 account, the Washington law enforcement officers' and fire fighters'
24 system plan 2 retirement account, the Washington public safety
25 employees' plan 2 retirement account, the Washington school employees'
26 retirement system combined plan 2 and 3 account, the Washington state
27 health insurance pool account, the Washington state patrol retirement
28 account, the Washington State University building account, the
29 Washington State University bond retirement fund, the water pollution
30 control revolving fund, and the Western Washington University capital
31 projects account. Earnings derived from investing balances of the
32 agricultural permanent fund, the normal school permanent fund, the
33 permanent common school fund, the scientific permanent fund, and the
34 state university permanent fund shall be allocated to their respective
35 beneficiary accounts. All earnings to be distributed under this
36 subsection (4)(a) shall first be reduced by the allocation to the state
37 treasurer's service fund pursuant to RCW 43.08.190.

1 (b) The following accounts and funds shall receive eighty percent
2 of their proportionate share of earnings based upon each account's or
3 fund's average daily balance for the period: The aeronautics account,
4 the aircraft search and rescue account, the county arterial
5 preservation account, the department of licensing services account, the
6 essential rail assistance account, the ferry bond retirement fund, the
7 grade crossing protective fund, the high capacity transportation
8 account, the highway bond retirement fund, the highway safety account,
9 the motor vehicle fund, the motorcycle safety education account, the
10 pilotage account, the public transportation systems account, the Puget
11 Sound capital construction account, the Puget Sound ferry operations
12 account, the recreational vehicle account, the rural arterial trust
13 account, the safety and education account, the special category C
14 account, the state patrol highway account, the transportation 2003
15 account (nickel account), the transportation equipment fund, the
16 transportation fund, the transportation improvement account, the
17 transportation improvement board bond retirement account, and the urban
18 arterial trust account.

19 (5) In conformance with Article II, section 37 of the state
20 Constitution, no treasury accounts or funds shall be allocated earnings
21 without the specific affirmative directive of this section.

22 NEW SECTION. **Sec. 12.** Section 10 of this act expires July 1,
23 2006.

24 NEW SECTION. **Sec. 13.** Section 11 of this act takes effect July 1,
25 2006.

26 NEW SECTION. **Sec. 14.** Sections 1 through 9 of this act constitute
27 a new chapter in Title 79 RCW.

28 NEW SECTION. **Sec. 15.** Section 10 of this act is necessary for the
29 immediate preservation of the public peace, health, or safety, or
30 support of the state government and its existing public institutions,
31 and takes effect July 1, 2005.

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